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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/626,136	07/24/2003	Kerry L. Hawkins	HAWK 8693US	9353
1688	7590	10/06/2004	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			MULLER, BRYAN R	
		ART UNIT	PAPER NUMBER	3723
DATE MAILED: 10/06/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/626,136	HAWKINS, KERRY L.	
	Examiner	Art Unit	
	Bryan R Muller	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 and 17 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7, 15, 16 and 18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/20/0396</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Species 1 is represented by figures 1-3B, 5 and 12, species 2 is represented by figures 4, 6 and 7, species 3 is represented by figures 8 and 9, species 4 is represented by figures 10 and 11 and species 5 is represented by figure 13.
2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2 and 3 are considered to be generic.
3. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.
4. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).
5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. During a telephone conversation with Jonathan Soifer on August 13, 2004 a provisional election was made with traverse to prosecute the invention of species 1, represented by claims 1-7, 9, 15, 16, and 18. The examiner does not agree that claim 9 reads on the species elected by the applicant. Claim 9 discloses a can opener with a channel extending from a starting notch to a finishing notch and only having one port, however, all of the figures that represent the elected species have two ports and individual channels for each notch that do not connect the two notches. Affirmation of this election must be made by applicant in replying to this Office action.

7. Claims 8, 10-14 and 17 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

8. The specification is objected to because the element number 23 is shown in the drawings but not mentioned in the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4, 6, 7, 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagy (6311580).

11. Nagy discloses a can opener (10) having a forward surface, a rear surface, and a bottom surface, at least said bottom surface being curved to define a rounded heel (32) with a first portion (near 32) defining a first radius and a second portion (near 36) defining a second radius, said first radius being greater than said second radius. Nagy also discloses a first port (50) extending from a forward surface of the body and opening into a starting notch (36) [notch being defined as: A V-shaped cut.¹] located at the front surface and a second port (39) extending from a forward or upper surface of the body and opening into a finishing notch (44) also located at said front or upper surface, said finishing notch being spaced above said starting notch, a handle (34), a body (30) being formed at one end of the handle, a retaining portion (38) defined by a lip that is part of a channel extending over the opening of the finishing notch and extending from forward edge of opener body to finishing notch.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from IHSN Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Art Unit: 3723

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagy in view of Kelly (5309794).

14. Nagy discloses the flip top can opener as described supra but does not disclose that the first port has a flat lower surface, said port lower surface intersecting with said body front surface to define an acute angle. Kelly provides a can opener (10) with a starting notch (14), a finishing notch and port (21) opening into said notches. The port defines two flat surfaces, wherein both surfaces create an acute angle (column 3, lines 11 and 12) at their point of intersection with the front surface (17) of the body (19). Kelly also teaches that the "flattened tip (15a) of prong (15) can be easily slid beneath a ring tab" (column 3, lines 66 and 67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the rounded "tips" at the front surface of Nagy's invention with flattened tips that form acute angles in view of Kelly to make it easier to engage a ring tab with the can opener of Nagy.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Coker ('071) and Kubach ('794) both disclose tools for opening pull-top type cans.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan R Muller whose telephone number is (703) 305-0487. The examiner can normally be reached on M-F.
17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J Hail III can be reached on (703) 308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BRM *BLH*
August 03, 2004



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